

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PEARLE VISION, INC.,

Plaintiff,

vs.

Case No. 2:04-cv-357-FTM-29DNF

VISION CARE OF FT. MYERS, INC.,
A FLORIDA CORPORATION, LORAN A.
BENNET, an INDIVIDUAL, and BETTIE
MICHELLE GUYTON BENNETT,
an INDIVIDUAL

Defendants.

OPINION AND ORDER

_____This matter comes before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #76), filed April 13, 2005, recommending that a default be entered against Vision Care of Ft. Myers, Inc. and its pleadings be stricken. No objections have been filed and the time to do so has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). In the absence of specific objections, there is no requirement that a district judge review factual findings de novo, Garvey v. Vaughn, 993 F.2d 776, 779 n. 9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. §

636(b)(1)(C). The district judge reviews legal conclusions de novo, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court adopts the Report and Recommendation of the magistrate judge. Defendant Vision Care of Ft. Myers, Inc.'s pleadings will be stricken and a default will entered against it. Accordingly, counter-defendant's motion to dismiss counter-plaintiffs' counterclaims (Doc. #51) will be denied as moot as to the corporate defendant. Additionally, individual defendants Loran A. Bennett ("Mr. Bennett") and Bettie Guyton Bennett ("Mrs. Bennett") have requested voluntary dismissal of their counterclaims (Doc. #74) which the Court will grant. This renders the counter-defendant's motion to dismiss (Doc. #51) as to the individual counter-plaintiffs' counterclaims moot.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation is hereby **adopted** and the Clerk is directed to (a) **strike** defendant Vision Care of Ft. Myers, Inc.'s Answer and Counterclaim (but leave filed for record purposes); and (b) enter a default against defendant Vision Care of Ft. Myers, Inc.

2. Counter-plaintiffs Mr. Loran A. Bennett and Mrs. Bettie Michelle Guyton Bennett's counterclaims (Doc. #48) are **dismissed** without prejudice.

3. Pearle Vision's Motion to Dismiss (Doc. #51) is **DENIED** as **moot**.

DONE AND ORDERED at Fort Myers, Florida, this 11th day of May, 2005.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Douglas N. Frazier
United States Magistrate Judge

District Courtroom Deputy
Counsel of Record